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21 *Counsel for Debtor Cash Cloud Inc.*

22 UNITED STATES BANKRUPTCY COURT

23 DISTRICT OF NEVADA

24 In re

25 Case No. BK-23-10423-mkn

26 CASH CLOUD, INC.,  
27 dba COIN CLOUD,

28 Chapter 11

Debtor.

1 CASH CLOUD, INC., dba COIN CLOUD,  
 2 v.  
 3 LUX VENDING, LLC d/b/a BITCOIN  
 4 DEPOT,  
 5 Defendant.

6 Adv. Case No. 23-01015-MKN  
 7

**PLAINTIFF'S REPLY IN SUPPORT OF  
 ITS EX PARTE APPLICATION FOR  
 ORDER SHORTENING TIME FOR  
 HEARING ON PLAINTIFF'S (1) MOTION  
 FOR TEMPORARY RESTRAINING  
 ORDER; AND (2) MOTION FOR  
 PRELIMINARY INJUNCTION**

8  
 9  
 10 Hearing Date: OST PENDING  
 11 Hearing Time: OST PENDING  
 12  
 13

14 Cash Cloud, Inc. d/b/a Coin Cloud ("Cash Cloud," "Plaintiff," or "Debtor"), debtor and  
 15 debtor-in-possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), by and through  
 16 its undersigned counsel, Fox Rothschild LLP, and The Jimmerson Law Firm, P.C., hereby files this  
 17 Reply in Support of its Ex Parte Application for Order Shortening Time for Hearing on Plaintiff's (1)  
 18 Motion for Temporary Restraining Order; and (2) Motion for Preliminary Injunction (the "Reply").  
 19 This Reply is based upon the pleadings in this action, the following memorandum of points and  
 20 authorities, and any arguments made by counsel during any hearing on the Motion.

21 Dated this 23rd day of March, 2023.

22  
**FOX ROTHSCHILD LLP**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

**I. GOOD CAUSE EXISTS TO SHORTEN TIME ON THE HEARINGS FOR THE MOTIONS SEEKING INJUNCTIVE RELIEF**

This adversary proceeding centers on Defendant Lux Vending, LLC dba Bitcoin Depot's ("Defendant" or "Bitcoin Depot") malfeasance toward Plaintiff Cash Cloud Inc. Cash Cloud is a business that provides the general public the means to buy and sell digital currency (e.g., Bitcoin and other cryptocurrencies) using ATM-style digital currency kiosks. Defendant is a direct competitor of Cash Cloud with similar ATM-style kiosks that it also seeks to place in retail stores for use by consumers.

Defendant has been improperly attempting to take over Cash Cloud’s host locations—host locations where Cash Cloud has exclusive rights to operate digital currency kiosks pursuant to various host contracts. Since the bankruptcy petition was filed, Defendant has been contacting Cash Cloud’s hosts in an effort to persuade them to switch from Cash Cloud to Defendant. In these communications, Defendant has made several materially false statements concerning Cash Cloud. This effort by Defendant has gotten worse. Less than an hour before the Complaint in this adversary proceeding was filed, Defendant made several blatantly false statements to Cash Cloud’s enterprise hosts in an effort to take Cash Cloud’s business, including, but not limited to, claims that Cash Cloud (1) was not providing its customers with their purchased cryptocurrency, and (2) intended to stop paying its hosts for its locations. *See Exhibit 5 to Plaintiff’s Motion for Temporary Restraining Order.* Such actions not only violate the automatic bankruptcy stay, but are also independently tortious, causing significant and irreparable harm to Cash Cloud. As a result, Cash Cloud filed (1) a Motion for Temporary Restraining Order; and (2) a Motion for Preliminary Injunction (collectively, the “Motions”) to enjoin Defendant’s improper conduct.<sup>1</sup>

<sup>1</sup> Defendant opposes the Application for Order Shortening Time, arguing, in part, “if there was such an extreme urgency, Plaintiff would have filed the TRO and Preliminary Injunction motions contemporaneously with filing the adversary proceeding on March 10.” Had Cash Cloud had the clairvoyant knowledge that Defendant was going to send a libelous email to Royal Farms at 1:39 p.m. on March 10, 2023, minutes before the 2:25 p.m. filing of the Complaint that same day, it would have filed a motion for temporary restraining order contemporaneously with the Complaint. But without such information, Cash Cloud filed the Complaint first, followed by the Motions.

1           Defendant opposes the Application for Order Shortening Time for Hearing on Plaintiff's (1)  
 2 Motion for Temporary Restraining Order; and (2) Motion for Preliminary Injunction (the  
 3 "Application"), but it does not deny that it has been making false representations to Cash Cloud's  
 4 hosts in an effort to take Cash Cloud's locations. And nor can it. Cash Cloud and the Court have  
 5 the communications. Moreover, Defendant presents no defense or justification for their  
 6 misrepresentations in the Opposition.

7           Instead, Defendant asks the Court to deny the Application, arguing that there is no good cause  
 8 to justify the order shortening time claiming that Plaintiff "hasn't tied any actual damages to these  
 9 allegations." (Opp. at 3.) Hardly. As articulated in the Complaint and the Motions, the statements  
 10 made by Defendant have harmed Cash Cloud's reputation and deteriorated its goodwill. Christopher  
 11 McAlary, Cash Cloud's CEO, attested to the particular harm caused by Defendant's March 10, 2023  
 12 misrepresentations in particular, stating that a host who believes Defendant's false statements may  
 13 switch to Bitcoin Depot fearing (1) a potential dispute with a customer who may not receive the  
 14 cryptocurrency he/she purchased; (2) a non-responsive kiosk operator; and/or (3) that Cash Cloud  
 15 would stop making host payments in the near future. *See Declaration of Christopher McAlary in*  
 16 *Support of Plaintiff's Motion for Temporary Restraining Order (Exhibit 7 to the Motion) at ¶ 22.*  
 17 Indeed, the false statement about customers not receiving the digital currency they purchased is  
 18 particularly harmful to Cash Cloud as it not only puts Cash Cloud's host relationships at risk, but  
 19 also implicates the goodwill it has built up with its end-users. *Id.* This is precisely the sort of harm  
 20 that warrants injunctive relief be provided on an expedited basis. *See, e.g., Pac. Rollforming, LLC*  
 21 *v. Trakloc Int'l, LLC*, No. CIV. 07CV1897, 2007 WL 3333122, at \*3 (S.D. Cal. Nov. 7, 2007)  
 22 (granting application for order shortening time on motion for preliminary injunction).<sup>2</sup> Moreover,

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23 <sup>2</sup> Defendant cites to *Kennedy v. Full Tilt Poker*, CV09-07964MMAGRX, 2010 WL 1709842, at \*1 (C.D.  
 24 Cal. Apr. 26, 2010) in support of its Opposition (Opp. at 2). However, *Kennedy* is utterly inapposite to the  
 25 present dispute. In *Kennedy*, the court denied issuing an order shortening time to resolve a discovery dispute  
 26 because sheer speculation about the existence of a grand jury proceeding in another jurisdiction or the timing  
 27 of any potential indictment resulting therefrom would not be sufficient to warrant a hearing on shortened time.  
*Id.* ("While plaintiffs contend that they know 'first hand' that a grand jury investigation is under way, they do  
 not identify the source of their knowledge. More fundamentally, it is completely speculative whether an  
 indictment will be returned. The court has no information as to the basis for any possible indictment or whether

1 Cash Cloud has evidence that since the filing of the bankruptcy petition, Defendant has persuaded at  
 2 least one host to breach its host contract with Cash Cloud and switch to Defendant. *See* McAlary  
 3 Decl. at ¶ 25.

4 That Defendant opposes the Application arguing only that Cash Cloud hasn't been  
 5 sufficiently damaged yet by Defendant's malfeasance speaks volumes and should cause the Court to  
 6 view Defendant's entire position with significant skepticism. Defendant is a direct competitor to  
 7 Cash Cloud and Defendant's actions demonstrate its sinister motive to take its competitor out of the  
 8 marketplace by any means necessary, without regard to the automatic bankruptcy stay or Cash  
 9 Cloud's rights and property. Defendant's opposition to hearing the Motions seeking injunctive relief  
 10 on shortened time is just another part of this improper effort. The Court should find that good cause  
 11 exists to hear the Motions on shortened time and grant the Application.

12 Dated this 23rd day of March, 2023.

13 **FOX ROTHSCHILD LLP**

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26 it would support a forfeiture claim by the government. Plaintiffs' speculation on these points simply does not  
 27 constitute good cause to require defendants to respond to document requests on an expedited basis."). Such  
 circumstances do not compare with the clear and present danger caused by Defendant's actions in this case.